

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-239-C

IN RE:

Proceeding to Establish Guidelines for an)
Intrastate Universal Service Fund)
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
OPPOSITION TO DELTACOM'S MOTION FOR CONTINUANCE**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Opposition to the Motion for Continuance ("Motion") that ITC^DeltaCom Communications, Inc. ("DeltaCom") filed late in the afternoon of January 22, 2004. As explained below, DeltaCom essentially seeks a continuance so that it can serve BellSouth with a second set of discovery in order to follow-up on BellSouth's responses to DeltaCom's first set of discovery. DeltaCom, however, did not serve BellSouth with its first set of discovery until January 6, 2004 -- four months after BellSouth filed its tariff seeking additional funding from the intrastate universal service fund, two months after the Commission issued a Notice for Request of Intrastate Universal Service Funding for BellSouth, and one month after DeltaCom intervened in this proceeding. Had DeltaCom served its first set of discovery earlier, it would have had ample time to serve BellSouth with follow-up discovery in time to receive BellSouth's responses before the date of the hearing. The fact that DeltaCom chose not to do so does not justify its request to delay

the hearing in this docket. Moreover, DeltaCom has failed to make any showing that justifies its request that the Commission undo the hard work that all parties and the Commission's Staff have put into preparing for this hearing and issue a ruling during Tuesday's agenda session – the same day that several out-of-state witnesses will be traveling to the hearing the next day – to postpone the hearing in this proceeding. BellSouth, therefore, respectfully urges the Commission to deny DeltaCom's Motion.

I. DISCUSSION

As a general rule, the party seeking a continuance “must show that a delay is necessary for a just determination of the case.” *United States v. Clinger*, 681 F.2d 221, 223 (4th Cir. 1982). *Accord Mayrant v. Guignard*, 22 S.C. Eq. 112 (1849)(holding that the party who seeks a continuance “must be prepared to make a very strong showing” and denying a motion for continuance so that a party “might have time to prove, not a fact he could swear actually existed, but to ascertain the existence of a conjectural fact). An even stronger showing should be made in this case, because several of the witnesses who will testify during the hearing are residents of other states. If the Commission were to grant DeltaCom's motion during Tuesday's agenda session, therefore, many of these witnesses likely would already be en route to South Carolina for the hearing that is scheduled to start the following morning. The Commission should require the most exceptional of showings to justify putting so many persons to such an inconvenience, and DeltaCom has not made such a showing.

A. BellSouth's responses to DeltaCom's first set of discovery do not support DeltaCom's motion for a continuance.

As noted in DeltaCom's Motion, DeltaCom served BellSouth with discovery on January 6, 2004. In response to a question of whether the Commission has audited "BellSouth's use of the State USF," BellSouth objected to the vagueness of the question but, in an effort to be responsive, made the unremarkable statement that "members of the Commission's non-advisory Staff have, on occasion, requested information from BellSouth regarding the State USF, and BellSouth has provided the requested information, often verbally." *See* Attachment A to DeltaCom's Motion. DeltaCom claims that it is entitled to a continuance of the hearing so that it may seek additional discovery from BellSouth regarding this response. Had DeltaCom served its discovery earlier, it would have had ample time to serve BellSouth with follow-up discovery in time to receive BellSouth's responses before the date of the hearing. DeltaCom, however, waited until four months after BellSouth filed its tariff seeking additional funding from the intrastate universal service fund, two months after the Commission issued a Notice for Request of Intrastate Universal Service Funding for BellSouth, and one month after DeltaCom intervened in this proceeding to serve BellSouth with discovery. Having made that decision, DeltaCom should not now be allowed to delay the hearing.

B. BellSouth's supplemental testimony does not support DeltaCom's motion for a continuance.

In the course of responding to DeltaCom's discovery, BellSouth discovered an error in the pre-filed direct testimony of BellSouth witness Kathy Blake – rather than

drawing \$22.76 million annually from the State USF, BellSouth is drawing \$24.67 million annually, and rather than representing 18% of the BellSouth-specific portion of the State USF, this amount represents 19% of the BellSouth-specific portion of the State USF. Instead of waiting until the day of the hearing and asking Ms. Blake to make these corrections from the stand, BellSouth pre-filed five pages of supplemental testimony by Ms. Blake on January 20, 2004, and BellSouth served this supplemental testimony upon all parties, including DeltaCom. Attached as exhibits to these five pages of pre-filed supplemental testimony were two documents that support Ms. Blake's explanation of how this error occurred.

Nowhere in DeltaCom's Motion does it claim to be prejudiced by BellSouth's correcting this error in advance. The reason for this is that DeltaCom simply is not prejudiced – it has had ample notice of both the correction and the documents related to the correction. Ms. Blake's pre-filed supplemental testimony, therefore, does not support DeltaCom's Motion.

C. The continuance sought by DeltaCom would prejudice other parties to this proceeding.

DeltaCom's statement that the continuance it requests "will not prejudice the parties seeking additional USF funding" is not accurate. *See* Motion at 4. First, a continuance could delay the implementation of the additional funding to which these parties clearly are entitled. Second, as explained above, the continuance will cause a great deal of inconvenience to the out-of-state witnesses who likely will be en route to the

hearing by the time the Commission considers DeltaCom's Motion during its Tuesday agenda meeting.

II. CONCLUSION

For all of the reasons set forth above, BellSouth respectfully urges the Commission to deny DeltaCom's Motion for Continuance.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the undersigned, Jeanette B. Mattison, is employed by the Legal Department for BellSouth Telecommunications, Inc. and that she has caused BellSouth Telecommunications, Inc.'s Opposition to DeltaCom's Motion for Continuance in the foregoing matter to be served upon the persons named below this 23rd day of January, 2004, by placing copies of same in the United States Mail, postage prepaid, addressed as follows:

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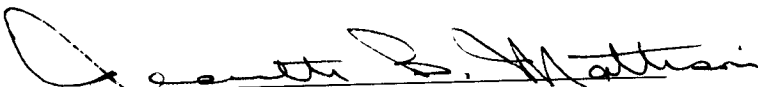
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